IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8955 of 1995
With
SPECIAL CIVIL APPLICATION No. 1764 of 1996

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASIKILAL JHINABHAI DARJI - Petitioner(s)
Versus
DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 01/07/2005

ORAL JUDGMENT

1.0 In these cross – petitions, the petitioner in Special

Civil Application No.8955 of 1995 has challenged the order dated 07.07.1995 passed by the Labour Court, Nadiad, in Reference No.618 of 1990, whereby the petitioner was denied full back wages for the interim period; and, in Special Civil Application No.1764 of 1996, the petitioner Corporation has challenged the said award as regards granting reinstatement in service to the respondent workman.

2.0 The brief facts of the case are that the petitioner workman was employed as a Driver in the respondent Corporation. On 22.05.1984, while the petitioner was on duty, an accident occurred. On account of the said accident, one boy expired. Charge-sheet was issued to the workman on 31.05.1984 and departmental inquiry was held against him. Since the charges against the petitioner workman was proved, the petitioner was placed on the minimum time-scale for the Driver category by way of penalty.

2.1 The petitioner workman preferred appeal before the First Appellate Authority of the respondent Corporation which came to be rejected on 24.02.1986. Criminal case was also registered against the petitioner workman before the Sessions Court, Umreth. On 13.06.1986, the Competent Authority of the respondent Corporation terminated the services of the petitioner workman. The petitioner workman preferred an appeal before the Appellate Court against the order of the Sessions Court. Since the petitioner workman was given benefit under the Probation of Offender's Act, he submitted an application before the respondent Corporation to reinstate him in service.

2.2 Since the petitioner workman was not reinstated in service, he raised an industrial dispute by way of a reference. The Labour Court, Nadiad, by impugned order, partly allowed the said reference. Hence, these petitions.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. The petitioner workman was convicted by the competent Criminal Court. Merely because the benefit of probation was granted to the petitioner workman, the effect of conviction is not effaced. The provisions of Section 81 of Chapter V of the Gujarat State Transport Employees Service Regulations state that subject to the provisions of Regulation 61, if an employee has been convicted by a criminal court or has been declared insolvent by a competent court, he shall be liable to be terminated without notice. It appears that the respondent authority has terminated the services of the petitioner workman by invoking the provisions of Section 81 of the said Regulation. The said provision only states that the services of an employee shall be **liable** to be terminated and not that they shall be terminated. The Labour Court has rightly interpreted the said provision.

4.0 In the impugned order, the Labour Court has observed that since the charge of negligence on the part of the petitioner workman was not proved beyond doubt, it cannot be concluded that the petitioner workman was solely responsible for the said accident. In my opinion, the Labour Court was justified in granting him reinstatement with continuity in service but without any back wages. I am in complete agreement with the reasonings given by the Labour Court in the impugned order and find no reason to interfere in these petitions.

5.0 In above view of the matter, the order dated 07.07.1995 passed by the Labour Court, Nadiad, in Reference No.618 of 1990 is confirmed. The respondent Corporation is directed to implement the award of the Labour Court within a period of one month from today and shall give all the benefits from the date of the publication of the award till it is realized within a period of three months thereafter. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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